

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK ROBERT STRELAU,

Defendant-Appellant.

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UNPUBLISHED

October 7, 2003

No. 239791

Oakland Circuit Court

LC No. 1999-168259-FH

Before: Bandstra, P.J., and White and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for aggravated stalking, MCL 750.411i, for which he was sentenced to serve forty months to five years in prison. We affirm.

Defendant argues that the trial court erred in striking defendant's direct examination testimony after defendant refused to submit to cross-examination by the prosecution.<sup>1</sup> Because defendant did not object to the striking of his testimony below, the issue is unpreserved for appellate review. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Accordingly, in order to avoid forfeiture of this issue defendant must demonstrate plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In *People v Holguin*, 141 Mich App 268, 271-272; 367 NW2d 846 (1985), this Court held that a witness' entire testimony should be stricken if the information sought on cross-examination closely relates to the issues being tried and if the inability to develop the information prevents the credibility of the witness from being tested. Here, defendant refused to submit to any cross-examination by the prosecution, denying the prosecution any chance to explore the issues being tried or to test defendant's credibility. Defendant's blanket refusal to testify on cross-examination warranted the striking of his direct testimony by the trial court. Consequently, there was no error, plain or otherwise. *Carines*, *supra*. Moreover, given that defendant acknowledged the elements of the charged crime during direct examination, it cannot

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<sup>1</sup> Defendant also argues that the trial court erred in limiting his testimony on direct examination. However, because we conclude that this testimony was properly stricken by the trial court, we need not address that issue.

be reasonably argued that the trial court's striking of that testimony affected defendant's substantial rights. *Id.*

Defendant also argues that the trial court abused its discretion in ordering that his ankles be shackled while in the courtroom during the trial. We disagree. The decision to shackle a defendant is within the sound discretion of the trial court, and this Court reviews the decision for an abuse of discretion. *People v Dixon*, 217 Mich App 400, 404-405; 552 NW2d 663 (1996). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted would conclude that there was no justification or excuse for the ruling made. *People v Miller*, 198 Mich App 494, 495; 499 NW2d 373 (1993).

Freedom from shackling during trial has long been recognized as an important component of a fair trial. *People v Dunn*, 446 Mich 409, 426; 521 NW2d 255 (1994); *People v Banks*, 249 Mich App 247, 256; 642 NW2d 351 (2002). A defendant may, however, be shackled to prevent the defendant's escape, to prevent the defendant from injuring others in the courtroom, or to maintain an orderly trial. *Banks, supra*. Here, the court officer testified that defendant had a history of problems with authority, and had been involved in a physical incident with the court officers after being removed from the courtroom at a previous hearing. The officer further testified that on the basis of these prior incidents, as well as his personal experiences with defendant, he was concerned about safety in the courtroom. Given this testimony, we do not conclude that the trial court abused its discretion in ordering that defendant's ankles be shackled. *Id.*

Moreover, even were we to conclude that the trial court erred in ordering defendant shackled, to justify reversal of a conviction on the basis of being shackled, defendant must show that prejudice resulted. *People v Robinson*, 172 Mich App 650, 654; 432 NW2d 390 (1988). A finding that the jury was unable to see the defendant's restraints can render any error harmless. *People v Johnson*, 160 Mich App 490, 493; 408 NW2d 485 (1987). Here, the record reflects that the trial court took care to place boxes in front of defendant's feet to prevent the jury from seeing the shackles. It was defendant who, by objecting to the shackles after the jury returned, informed the jurors of the shackles when they otherwise would not have known of the restraints. Reversible error must be that of the trial court, and not error to which the aggrieved party contributed by plan or negligence. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999). Because it was defendant's own actions that were responsible for revealing to the jury that he was shackled in the courtroom, defendant is entitled to no relief on this claimed error.

We also disagree with defendant's assertion that the trial court violated his right to represent himself at trial when it ordered defense counsel to take over the defense. Whether a defendant should be allowed to represent himself is within the sole discretion of the trial court and the decision should not be reversed absent an abuse of that discretion. *People v Anderson*, 398 Mich 361, 367; 247 NW2d 857 (1976).

A criminal defendant's right to represent himself is guaranteed by both the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 13; see also *People v Kevorkian*, 248 Mich App 373, 417; 639 NW2d 291 (2001). However, the right is not absolute. *Anderson, supra* at 366. Before allowing a defendant to represent himself, a trial court must determine that the defendant's self-representation will not disrupt or unduly inconvenience or burden the court. *People v Dennany*, 445 Mich 412, 432; 519 NW2d 128 (1994) (Griffin, J.). Where a trial court

fears that to allow a defendant to discharge his defense counsel after trial has begun would lead to an outburst with which it would be hard to deal, the trial court has the power to confine the accused to the capable protection of his attorney. *People v Henley*, 382 Mich 143, 149; 169 NW2d 299 (1969).

Here, defendant continually interrupted the trial court and the prosecutor and disregarded the trial court's instructions. Defendant's frequent and baseless objections, repeated accusations of a sexual affair between the judge and defense counsel, and refusal to conform to the trial court's instructions regarding the appropriate behavior before the jury, resulted in delay and confusion. The evident disruption and inconvenience caused by defendant's self-representation was a sufficient reason to justify the trial court in ruling that defense counsel would take over the defense. To rule otherwise would have allowed defendant to dominate the proceedings with his contemptuous and self-prejudicing behavior.

We also reject defendant's allegations of prosecutorial misconduct. Defendant claims that the prosecution's failure to charge him with aggravated stalking in 1995, the year the first of thirty letters were sent to complainant in violation of a no contact order, constitutes prosecutorial misconduct. However, although procedural due process guarantees protection against delay between the commission of a crime and arrest for that offense, *People v Cain*, 238 Mich App 95, 109; 605 NW2d 28 (1999), to merit reversal of a defendant's conviction any such delay must have resulted in actual and substantial prejudice to the defendant's right to a fair trial, *People v Crear*, 242 Mich App 158, 166; 618 NW2d 91 (2000). The defendant bears the burden of coming forward with evidence of prejudice resulting from the delay. *Id.*; *People v Adams*, 232 Mich App 128, 134-135; 591 NW2d 44 (1998). To be substantial, the prejudice to the defendant must have meaningfully impaired his ability to defend against the charges such that the outcome of the proceedings was likely affected. *Adams, supra*.

Defendant alleges no prejudice to himself resulting from the delay in bringing charges, apart from the fact that he was prevented from being released on his "out date" and that the delay "frustrate[d] any attempt to prevent further acts which the prosecution found to violate the stalking statute." Because defendant does not present any evidence that the delay impaired his ability to defend against the charges such that the outcome of the proceedings was likely affected, there is no error requiring reversal.

Defendant also argues that, by introducing his statements and actions towards the complainant at the preliminary examination, the prosecutor violated defendant's right to confront the witness against him. However, while defendant's right to confront the witnesses against him requires, among other things, a face-to-face meeting of the defendant and the witnesses against him, it does not include the right to intimidate, scare, or threaten a witness. See *People v Pesquera*, 244 Mich App 305, 309-311; 625 NW2d 407 (2001). The fact that that defendant's presence was required at the preliminary examination did not absolve defendant of responsibility for his actions at that hearing, where he "stared down" the complainant and spoke threateningly to her. Defendant's assertion of error is without merit.

Defendant's final issue on appeal, that he was not afforded an opportunity to allocute, is without merit. A trial court must, on the record, give the defendant an opportunity to advise the court of any circumstances he believes the court should consider in imposing sentence. MCR 6.425(D)(2)(c); *People v Petit*, 466 Mich 624, 627; 648 NW2d 193 (2002). A review of the

sentencing transcript indicates that defendant was given ten minutes to speak to the court regarding his sentence.

We affirm.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Pat M. Donofrio